

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 4835 of 2004

Between:

G.M.K. Arya, S/o.Late G.R.K. Arya,
R/o.11-49-348, Gopal Nivas, Shivalayam Street, Vijayawada.

..... PETITIONER

AND

1 The Municipal Corporation of Vijayawada, rep., by

its Commissioner, Vijayawada.

2 The City Planner, Vijayawada Municipal Corporation, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned notice in RC.No.U.C.No.9/2004, dated 10.3.2004, issued by the 1st respondent under the Hyderabad Municipal Corporation Act, 1955, as arbitrary, illegal, contrary to the provisions of Hyderabad Municipal Corporation Act, 1955 as applicable to the Vijayawada Municipal Corporation and against the order of this Hon'ble Court dated 27.1.2004, made in W.P. No.27125 of 2003, violative of Articles 14 and 300-A of the Constitution of India and consequently direct the respondents to adhere to the order of this Hon'ble Court dated 27.1.2004 made in W.P. No.27125 of 2003 and not to demolish the premises bearing Door No.11-49-248, Shivalayam Street, Vijayawada.

**Counsel for the Petitioner: MR.C.V.R.RUDRA PRASAD, REPRESENTING,
MR.C.V.MOHAN REDDY**

Counsel for the Respondents: MR.T.S.VENKATA RAMANA

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.4835 OF 2004

ORDER:

The Municipal Corporation of Vijayawada (hereafter called, the Corporation) issued a notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short, the Act) directing the petitioner to remove unauthorised structures made in the ground and first floor of house bearing Door No.11-49-348 and the un-authorised construction made at second and third floors. Aggrieved by the same, petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India praying for a Writ of Mandamus declaring the impugned notice as illegal and contrary to the provisions of the Act. It is also the grievance of the petitioner that the impugned notice/order is contrary to the order passed by this Court in Writ Petition No.27125 of 2003, dt.27.1.2004.

The petitioner claims that he is the owner of premises bearing No.11-49-348 situated at Sivalayam Street, Vijayawada, having inherited the property from his father. As Sivalayam Street is narrow, the Corporation approached the petitioner by issuing notice dt.16.12.2003 requesting the petitioner to deliver a portion of the property for road widening. The petitioner did not agree for the same, but alleging that the Corporation is contemplating to demolish a portion of the building, filed a writ petition being W.P.No.24643 of 2003. This Court disposed of the said Writ Petition by order dt.19.12.2003 directing the Corporation to take action in accordance with law. This Court also observed that if the petitioner has made construction in contravention of sanctioned plan, it would be open to the Corporation to notify the petitioner about such deviations.

The petitioner made a representation on 20.12.2003 enclosing copies of

relevant documents requesting the Corporation not to demolish the building. The Corporation issued notice on 25.12.2003 directing the petitioner to remove unauthorised construction as the petitioner did not comply with set back rules. Again the petitioner filed a writ petition being W.P.No.27125 of 2003 challenging the notice of the Corporation bearing R.C.No.G.2-42120/2003, dt.25.12.2003. This Court appointed an Advocate Commissioner and after receiving report, passed orders on 27.1.2004 disposing the Writ Petition. This Court observed that the Corporation is entitled to acquire the land in accordance with the procedure contemplated under Sections 146 and 147 of the Act and that if the petitioner has constructed second and third floors without permission, he is not entitled for any compensation. This Court further observed that the Corporation is entitled to remove second and third floors constructed unauthorisedly after following due procedure of law. The petitioner alleges that as per the judgment of this Court dt.27.1.2004 in Writ Petition No.27125 of 2003, he is entitled to 69 Sq.yards of land as per the schedule mentioned in the partition deed showing partition of property between his father and others. After the judgment of this Court, the Corporation issued notice under Section 452(1) of the Act and thereafter passed impugned notice/order under Section 636 of the Act. The petitioner contends that though he has submitted explanation dt.9.3.2004 requesting the Corporation to consider the case of the petitioner on par with other building owners in Sivalayam Street, the impugned order was passed without considering the explanation.

This Court while admitting the Writ Petition on 15.3.2004 passed interim orders in W.P.M.P.No.6330 of 2004 directing *status quo* to be maintained as on that day. The Corporation filed a miscellaneous application being W.V.M.P.No.1132 of 2004 praying this Court to vacate the interim order dt.15.3.2004. The matter was heard finally with the consent of the learned counsel for the petitioner and the learned counsel for the respondents at the interlocutory stage itself.

In the counter affidavit filed along with the W.V.M.P., it is stated that as per the master plan the width of the road in Sivalayam Street is forty feet and therefore the Corporation initiated steps to widen the road and accordingly issued notice on 16.12.2003 appealing to the owners of the properties falling under road widening proposal to cooperate with the Corporation and deliver the sites likely to be affected due to road widening. The petitioner informed that he is not willing to deliver the site, but approached this Court. The petitioner submitted a representation on 20.12.2003 and after considering the same, a show cause notice bearing Rc.No.G.2-42120/2003, dt.25.12.2003 was issued directing the petitioner to remove unauthorised structures and also maintain minimum set backs. The petitioner again approached this Court by filing Writ petition No.27125 of 2003, which was disposed of by this Court on 27.1.2004 observing that second and third floors were constructed un-authorisedly. The Court also gave liberty to the Corporation to remove the unauthorised construction duly following law. Therefore, in accordance with the judgment, a notice was issued under Section 452 of the Act being Rc.No.U.C.9/2004, dt.5.3.2004. The petitioner failed to submit explanation to the show cause notice and therefore the impugned order under Section 636 of the Act was issued.

It is further stated in the counter affidavit that Sivalayam Street Road is only 15 feet to 20 feet width in zig zag manner, the road is very important road having lot of retail and wholesale activity concentrated, and there is every need to take up road widening in view of the traffic congestions and also in view of Krishna Pushkaram Festival. Therefore, there is no error on the part of the Corporation in issuing notice under Section 452 of the Act and order under Section 636 of the Act. All other allegations of discrimination and arbitrariness alleged by the petitioner are denied.

Learned counsel for the petitioner, Sri C.V.R.Rudra Prasad vehemently contends that the impugned order/notice under Section 636 of the Act is illegal and arbitrary and violative of principles of natural justice as the explanation submitted by the petitioner was not considered. Secondly he would urge that the Corporation is resorting to method of pick and choose in demolishing the houses for alleged purpose of road widening and the same is violative of Article 14 of Constitution of India. **Per contra**, learned Standing Counsel for the Corporation, Sri T.S.Venkata Ramana submits that this Court on earlier two occasions gave liberty to the Corporation to proceed against the petitioner in accordance with law for removal of unauthorised constructions and that the Corporation has taken action strictly in accordance with law. He would urge that though notice was issued to the petitioner on 5.3.2004 which was received by the petitioner on 7.3.2004, he has not submitted explanation and therefore having waited till 8.3.2004, the Corporation passed orders on 10.3.2004 which is sufficient compliance with law. Lastly, he would urge that the ground of discrimination is baseless because as per the master plan the Corporation is taking steps to widen the road to 40 feet and proposing to acquire the land for the purpose in Sivalayam Street.

In the first instance, when the petitioner filed Writ Petition No.26463 of 2004 apprehending coercive demolition of the portion of the building, this Court disposed of the said Writ Petition on 19.12.2003 observing as under:

In view of the same, petitioner can make his objections by producing necessary sanctioned plan, and if it is proved that the construction is as per sanctioned plan and is in accordance with law, the respondent-Corporation without following due procedure of law cannot demolish the same. But if the construction is not in accordance with sanctioned plan, namely relevant set backs were not observed, the Corporation can notify such deviations and permit the petitioner to remove such deviations and if the land of the petitioner is required for widening of such road or for removal of constructed area, the corporation is at liberty to follow the procedure contemplated under law, and only after following such procedure the Corporation can proceed with the widening of the road.

Thereafter, admittedly the petitioner submitted explanation and after considering the same, the Corporation issued notice on 25.12.2003. Again the petitioner filed Writ petition No.27125 of 2003 challenging the said notice directing the petitioner to remove unauthorised construction. This Court appointed an Advocate Commissioner to inspect the premises in question and submit a report with regard to the age of the building and also as to whether the construction made is of recent origin in front of the premises as per the old sanctioned plan available with the Corporation. This Court placing reliance on the Advocate Commissioner's

Report recorded a finding that second and third floors are of recent origin constructed about 15 to 20 years ago, that the petitioner has not encroached into the road margin and that he is entitled only to 69 Sq.yards as per schedule mentioned in partition deed and that petitioner has not set apart any set backs. This Court also observed that Corporation shall measure the property and issue notice for removal of such encroachments, i.e., set back portion and if any further area is required, the Corporation can acquire the land. The orders passed by this Court read as under:

...If the same is within 69 Sq.yards, the petitioner is entitled to compensation for the structure, but not for the land in excess of 69 Sq.yards because he has set apart set backs of 3 feet, which is always vest in the corporation. If any further area is required for widening of the road, it is needless to observe that the corporation is entitled to issue notification and follow the procedure contemplated under Sections 146 and 147 of the Hyderabad Municipal Corporation Act, and also the procedure contemplated under the Land Acquisition Act, duly notifying the area which is likely to be affected by the road widening and then can take possession of the property. If any area is already notified for the purpose of widening of the road, the petitioner is at liberty to submit his representation requesting the Corporation to acquire the whole property as contemplated under Section 49 of the Land Acquisition Act. On such representation being made, it is for the Corporation to follow the due procedure for acquiring the whole premises, if required. However, it is made clear that unless the petitioner establishes that the 2nd and 3rd floors are constructed with the permission of the Corporation, he is not entitled to any compensation, and if the 2nd and 3rd floors are constructed unauthorisedly, the corporation is entitled to remove the same after following the due procedure of law.

In view of the observations made by this Court in two earlier orders, it cannot be said that the Corporation has acted illegally in issuing the notice under Section 452 of the Act. The Corporation has followed the procedure contemplated under law for removing unauthorised construction made in deviation of the sanctioned plan. After receiving notice on 7.3.2004 – which is not denied; the petitioner submitted explanation dt.9.3.2004 and admittedly sent it by Registered Post with Acknowledgement Due. It was received by the Corporation on 10.3.2004 and by that time the order under Section 636 of the Act was issued. Learned counsel for the petitioner does not dispute that for removing unauthorised construction the Corporation has issued notice under Section 452(1) of the Act, obtained explanation for the contraventions and then passed order under Section 636 of the Act. The procedure prescribed has been strictly followed. If the petitioner has sent explanation with delay, the Corporation cannot be held responsible and it is only the petitioner who has to blame himself. Therefore, I do not agree with the submission of the learned counsel for the petitioner that the impugned order suffers from infirmity for non-consideration of the explanation. Having regard to history of the case, the Corporation was justified in passing the order on 10.3.2004 especially when the time granted to the petitioner for submitting explanation expired on 8.3.2004.

The submission of the learned counsel for the petitioner that the action of the respondents is discriminatory is misconceived. When a road is to be widened and there are a number of buildings, the Corporation cannot be expected to widen the

road by demolishing all the buildings in the street at one point of time. The Corporation is required to adhere to the provisions of the Act and as and when one hurdle is cleared, the Corporation may do the work, and wait for clearing other hurdles. Merely because, the Corporation takes up action in stages, the same cannot be discriminatory. It may be mentioned that this Court has already observed that petitioner has not left the set backs as per the building byelaws and therefore the Corporation was justified in taking action to remove the construction which was made in the portion earmarked for set back.

For the above reasons, I do not see any infirmity or illegality in the impugned notice/order passed under Section 636 of the Act. The Writ Petition is devoid of merit and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

03.9.2004

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To

1. The Commissioner, Municipal Corporation of Vijayawada,
Vijayawada.
2. The City Planner, Vijayawada Municipal Corporation, Vijayawada.
3. 2 CD copies.